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SUITE 304
ANNAPOLIS MD 21401

OCT 29 2007

In re Application of:
K. Paul Muller et al. : DECISION ON PETITION TO
Serial No.: 09/895,198 : WITHDRAW THE HOLDING
Filed: July 2, 2001 : OF ABANDONMENT
Attorney Docket No.: YO999-247DIV :

This is a decision on the petition to withdraw the holding of abandonment under 37 C.F.R. § 1.181(a) filed via facsimile transmission on August 15, 2003 and refiled via facsimile transmission on September 21, 2007. There is no fee for this petition.

The petition is **GRANTED**.

A final Office action was mailed on October 7, 2002. An after-final amendment was filed on December 6, 2002. An advisory action was mailed on January 2, 2003 indicating that the after-final amendment would not be entered because it raised new issues that would require further consideration and/or search. A Notice of Abandonment was mailed on July 28, 2003. Although the Notice of Abandonment indicates that the application was abandoned in view of applicant's failure to timely file a proper reply to the advisory action of January 2, 2003, it was actually held abandoned for failure to timely file a proper reply to the final Office action mailed on October 7, 2002.

A proper reply to a final rejection under 37 C.F.R. § 1.113 may only be either (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 C.F.R. § 1.114.

Petitioner asserts that a Request for Continued Examination (RCE) was timely filed in the United States Patent and Trademark Office (USPTO) via facsimile transmission on January 7, 2003. To support this assertion, petitioner has submitted a copy of the RCE which indicates the required submission under 37 C.F.R. § 1.114 to be the previously non-entered, after-final amendment of December 6, 2002. The copy of the RCE has a Certificate of Transmission dated January 7, 2003 signed by registered patent attorney/agent Frederick W. Gibb, III. In addition, petitioner has supplied a copy of the USPTO's Auto-Reply Facsimile Transmission showing 1 page (which in this case was the RCE) was received at the USPTO on January 7, 2003.

A review of the application file record reveals that the original RCE is not of record in the application file and cannot be located. Further, Office records indicate that the fee for an RCE was not charged to the given Deposit Account.

A petition to withdraw the holding of abandonment based on a Certificate of Transmission by facsimile transmission must include the following requirements:

- (1) A copy of the original response bearing a signed Certificate of Transmission which includes the date of signing; and
- (2) A statement under 37 C.F.R. § 1.8(b)(3) attesting to the personal knowledge of the transmission of the original response on the date indicated on the Certificate of Transmission (see 37 C.F.R. § 1.8(b) and MPEP 512).

In most cases, the first page of the response shown on the Auto-Reply is not the total response. In the present case, since the first page shown on the Auto-Reply is the total response (i.e., the RCE) and the Auto-Reply indicates that the RCE was received at the USPTO on January 7, 2003, it is not necessary to satisfy requirement (2) above. Nevertheless, the practice at the USPTO is to construe the signed certification of facsimile transmission on the first page of the response shown on the Auto-Reply, as the statement noted in requirement (2) above.

Accordingly, the petition is granted. The Notice of Abandonment mailed on July 28, 2003 is hereby VACATED and the holding of abandonment is withdrawn.

The RCE filed with the petition will be processed by the Technology Center 2800 support staff and the examiner will prepare an Office action responsive to the after-final amendment filed on December 6, 2002.

Any inquiries regarding this decision should be directed to Edward Westin at (571) 272-1638.



Richard K. Seidel, Director
Technology Center 2800
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